

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

FILED

DEC 03 2021

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY DEPUTY

FRANTZ DESIGN, INC.,

Plaintiff,

v.

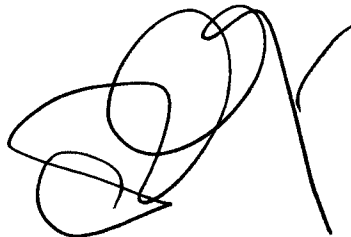
DIAMOND ORTHOTIC LABORATORY,
LLC et al.,

Defendants.

Civil Action No. 1:19-cv-00970-ADA

VERDICT FORM

In answering the following questions, you are to follow the instructions I have given you in the Court's jury charge. Your answers to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Final Jury Instructions. You should refer to and consider the Final Jury Instructions as you answer these questions in the Verdict Form.

A large, stylized handwritten signature or set of initials, possibly reading 'JL' or 'JLX', is written in black ink.

QUESTION 1(A): TRADEMARK INFRINGEMENT

Has Frantz Design proven, by a preponderance of the evidence, that Defendants infringed Frantz Design's federally-registered mark EMA in connection with distributing, selling or offering for sale "EMA" devices?

Check "Yes" or "No."

"Yes" is a finding for Frantz Design. "No" is a finding for the Defendant shown.

Diamond Orthotic Laboratory LLC:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
T&S Therapy Centre Int'l, LLC:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Steven Olmos:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>

QUESTION 1(B): TRADEMARK INFRINGEMENT

Has Frantz Design proven, by a preponderance of the evidence, that Defendants infringed Frantz Design's federally-registered mark EMA in connection with distributing, selling or offering for sale DDSO devices?

Check "Yes" or "No."

"Yes" is a finding for Frantz Design. "No" is a finding for the Defendant shown.

Diamond Orthotic Laboratory LLC:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
T&S Therapy Centre Int'l, LLC:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Steven Olmos:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

Please proceed to the next question.

IF YOU ANSWERED “YES” TO ANY PART OF QUESTION 1(A), PLEASE ANSWER QUESTION 2(A) BELOW; OTHERWISE PROCEED TO QUESTION 2(B)

QUESTION 2(A): COUNTERFEIT MARK

Has Frantz Design proven, by a preponderance of the evidence, that the infringing conduct proven under Question 1(A) included the use of a counterfeit EMA mark?

Check “Yes” or “No.”

“Yes” is a finding for Frantz Design. “No” is a finding for the Defendant shown.

Diamond Orthotic Laboratory LLC:	YES ____	NO ____
T&S Therapy Centre Int’l, LLC:	YES ____	NO ____
Steven Olmos:	YES ____	NO ____

Please proceed to the next question.

IF YOU ANSWERED “YES” TO ANY PART OF QUESTION 1(B), PLEASE ANSWER QUESTION 2(B) BELOW; OTHERWISE PROCEED TO QUESTION 3

QUESTION 2(B): COUNTERFEIT MARK

Has Frantz Design proven, by a preponderance of the evidence, that the infringing conduct proven under Question 1(B) included the use of a counterfeit EMA mark?

Check “Yes” or “No.”

“Yes” is a finding for Frantz Design. “No” is a finding for the Defendant shown.

Diamond Orthotic Laboratory LLC:	YES ____	NO <input checked="" type="checkbox"/>
T&S Therapy Centre Int’l, LLC:	YES ____	NO <input checked="" type="checkbox"/>
Steven Olmos:	YES ____	NO <input checked="" type="checkbox"/>

Please proceed to the next question.

IF YOU ANSWERED “YES” TO ANY PART OF QUESTION 1(A), PLEASE ANSWER QUESTION 3(A) BELOW; OTHERWISE PROCEED TO QUESTION 3(B)

QUESTION 3(A): WILLFULNESS

For any Defendant where you answered “Yes” to Question 1(A), has Frantz Design proven, by a preponderance of the evidence, that such Defendant willfully infringed?

Check “Yes” or “No.”

“Yes” is a finding for Frantz Design. “No” is a finding for the Defendant shown.

Diamond Orthotic Laboratory LLC: YES____ NO____

T&S Therapy Centre Int’l, LLC: YES____ NO____

Steven Olmos: YES____ NO____

Please proceed to the next question.

IF YOU ANSWERED "YES" TO ANY PART OF QUESTION 1(B), PLEASE ANSWER QUESTION 3(B) BELOW; OTHERWISE PROCEED TO QUESTION 4

QUESTION 3(B): WILLFULNESS

For any Defendant where you answered "Yes" to Question 1(B), has Frantz Design proven, by a preponderance of the evidence, that such Defendant willfully infringed?

Check "Yes" or "No."

"Yes" is a finding for Frantz Design. "No" is a finding for the Defendant shown.

Diamond Orthotic Laboratory LLC:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
T&S Therapy Centre Int'l, LLC:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Steven Olmos:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

Please proceed to the next question.

QUESTION 4(A): FALSE DESIGNATION OF ORIGIN

Has Frantz Design proven, by a preponderance of the evidence, that Defendants falsely represented that Defendants' "EMA" and/or DDSO devices come from, are approved by, are affiliated with, or are sponsored by Plaintiff Frantz Design?

Check "Yes" or "No."

"Yes" is a finding for Frantz Design. "No" is a finding for the Defendant shown.

Diamond Orthotic Laboratory LLC:	YES _____	NO <input checked="" type="checkbox"/>
T&S Therapy Centre Int'l, LLC:	YES _____	NO <input checked="" type="checkbox"/>
Steven Olmos:	YES _____	NO <input checked="" type="checkbox"/>

QUESTION 4(B): WILLFULNESS

Has Frantz Design proven, by a preponderance of the evidence, that the misconduct proven under Question 4(A) was willful? *N/A ?*

Check "Yes" or "No."

"Yes" is a finding for Frantz Design. "No" is a finding for the Defendant shown.

Diamond Orthotic Laboratory LLC:	YES _____	NO <input checked="" type="checkbox"/>
T&S Therapy Centre Int'l, LLC:	YES _____	NO <input checked="" type="checkbox"/>
Steven Olmos:	YES _____	NO <input checked="" type="checkbox"/>

Please proceed to the next question.

QUESTION 5: UNCLEAN HANDS

Has Plaintiff Frantz Design proven by a preponderance of the evidence that Defendants at any point had “unclean hands” in connection with the use of Plaintiff Frantz Design’s trademarks such that it may not assert any equitable defenses to Plaintiff’s claims?

Check “Yes” or “No” as to each Defendant.

“Yes” is a finding for Plaintiff. “No” is a finding for the Defendant shown.

Diamond Orthotic Laboratory LLC:	YES _____	NO <input checked="" type="checkbox"/>
T&S Therapy Centre Int’l, LLC:	YES _____	NO <input checked="" type="checkbox"/>
Steven Olmos:	YES _____	NO <input checked="" type="checkbox"/>

FOR ANY DEFENDANT FOR WHICH YOU ANSWERED “YES” TO QUESTION 5, DO NOT ANSWER QUESTION 6 AND PLEASE PROCEED TO QUESTION 7.

FOR ANY DEFENDANT FOR WHICH YOU ANSWERED “NO” TO QUESTION 5, PLEASE PROCEED TO QUESTION 6.

QUESTION 6(A): ACQUIESCENCE

Has any Defendant against whom you otherwise would have found liability proven, by a preponderance of the evidence, that Frantz Design acquiesced in Defendants' use of Frantz Design's EMA mark in connection with "EMA" sales such that it should be denied recovery?

Check "Yes" or "No" as to each Defendant.

"Yes" is a finding for the Defendant shown. "No" is a finding for Plaintiff shown.

Diamond Orthotic Laboratory LLC:	YES ____	NO ____
T&S Therapy Centre Int'l, LLC:	YES ____	NO ____
Steven Olmos:	YES ____	NO ____

QUESTION 6(B): ACQUIESCENCE

Has any Defendant against whom you otherwise would have found liability proven, by a preponderance of the evidence, that Frantz Design acquiesced in Defendants' use of Frantz Design's EMA mark in connection with DDSO sales such that it should be denied recovery?

Check "Yes" or "No" as to each Defendant.

"Yes" is a finding for the Defendant shown. "No" is a finding for Plaintiff shown.

Diamond Orthotic Laboratory LLC:	YES <u>✓</u>	NO ____
T&S Therapy Centre Int'l, LLC:	YES <u>✓</u>	NO ____
Steven Olmos:	YES <u>✓</u>	NO ____

Please proceed to the next question.

QUESTION 6(C): EQUITABLE ESTOPPEL

Has any Defendant against whom you otherwise would have found liability proven, by a preponderance of the evidence, that Frantz Design should be equitably estopped from enforcing its EMA mark against Defendants, or that it should be denied recovery?

Check "Yes" or "No" as to each Defendant.

"Yes" is a finding for the Defendant shown. "No" is a finding for Plaintiff shown.

Diamond Orthotic Laboratory LLC:	YES ____	NO ____
T&S Therapy Centre Int'l, LLC:	YES ____	NO ____
Steven Olmos:	YES ____	NO ____

QUESTION 6(D): EQUITABLE ESTOPPEL

Has any Defendant against whom you otherwise would have found liability proven, by a preponderance of the evidence, that Frantz Design should be equitably estopped from enforcing its EMA mark against Defendants in connection with DDSO sales such that it should be denied recovery?

Check "Yes" or "No" as to each Defendant.

"Yes" is a finding for the Defendant shown. "No" is a finding for Plaintiff shown.

Diamond Orthotic Laboratory LLC:	YES ____	NO <u>✓</u>
T&S Therapy Centre Int'l, LLC:	YES ____	NO <u>✓</u>
Steven Olmos:	YES ____	NO <u>✓</u>

QUESTION 6(E): WAIVER

Has any Defendant against whom you otherwise would have found liability proven, by a preponderance of the evidence, that Frantz Design waived its right to enforce its EMA mark against Defendants, or that it should be denied recovery?

Check "Yes" or "No" as to each Defendant.

"Yes" is a finding for the Defendant shown. "No" is a finding for Plaintiff shown.

Diamond Orthotic Laboratory LLC:	YES ____	NO ____
T&S Therapy Centre Int'l, LLC:	YES ____	NO ____
Steven Olmos:	YES ____	NO ____

QUESTION 6(F): EQUITABLE ESTOPPEL

Has any Defendant against whom you otherwise would have found liability proven, by a preponderance of the evidence, that Frantz Design waived its right to enforce its EMA mark against Defendants in connection with DDSO sales such that it should be denied recovery?

Check "Yes" or "No" as to each Defendant.

"Yes" is a finding for the Defendant shown. "No" is a finding for Plaintiff shown.

Diamond Orthotic Laboratory LLC:	YES ____	NO <input checked="" type="checkbox"/>
T&S Therapy Centre Int'l, LLC:	YES ____	NO <input checked="" type="checkbox"/>
Steven Olmos:	YES ____	NO <input checked="" type="checkbox"/>

Please proceed to the next question

**IF YOU ANSWERED “YES” TO ANY QUESTION 1(A), 1(B), or 4, PLEASE
ANSWER QUESTION 7(a)-(b) BELOW; OTHERWISE PROCEED TO QUESTION 8**

QUESTION 7(a): DISGORGEMENT

What amount of profits do you find that Frantz Design proved by a preponderance of the evidence that each of the following Defendants made on the sale of “EMAs” that should be awarded to Plaintiff?

Diamond Orthotic Laboratory LLC: \$ _____

T&S Therapy Centre Int’l, LLC: \$ _____

QUESTION 7(b): DISGORGEMENT

What amount of profits do you find that Frantz Design proved by a preponderance of the evidence that each of the following Defendants made on the sale of “DDSOs” that should be awarded to Plaintiff?

Diamond Orthotic Laboratory LLC: \$ 120,000

T&S Therapy Centre Int’l, LLC: \$ —

Please proceed to the next question.

IF YOU ANSWERED “YES” TO QUESTION 2(A), PLEASE ANSWER QUESTION 8 BELOW; OTHERWISE PROCEED TO QUESTION 9

QUESTION 10: TEXAS TRADEMARK INFRINGEMENT

Has Frantz Design proven, by a preponderance of the evidence, that Defendants committed trademark infringement under Texas state law?

Check “Yes” or “No.”

“Yes” is a finding for Frantz Design. “No” is a finding for the Defendant shown.

Diamond Orthotic Laboratory LLC:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
T&S Therapy Centre Int’l, LLC:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Steven Olmos:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

Please proceed to the next question.

IF YOU ANSWERED "YES" TO QUESTION 2(A), PLEASE ANSWER QUESTION 8 BELOW; OTHERWISE PROCEED TO QUESTION 9

QUESTION 8: STATUTORY DAMAGES

For any Defendant where you answered "Yes" to Question 3(A), please answer 8(A) below.

For any Defendant where you answered "No" to Question 3(A), please answer 8(B) below.

QUESTION 8(A): What amount of money not less than \$1,000 and not more than \$2,000,000 should be awarded to Plaintiff as compensation for Defendant(s)' willful trademark counterfeiting?

Diamond Orthotic Laboratory LLC: \$ _____

T&S Therapy Centre Int'l, LLC: \$ _____

Steven Olmos: \$ _____

QUESTION 8(B): What amount of money not less than \$1,000 and not more than \$1,000,000 should be awarded to Plaintiff as compensation for Defendant(s)' trademark counterfeiting?

Diamond Orthotic Laboratory LLC: \$ _____

T&S Therapy Centre Int'l, LLC: \$ _____

Steven Olmos: \$ _____

Please proceed to the next question.

IF YOU ANSWERED "YES" TO QUESTION 2(B), PLEASE ANSWER QUESTION 9 BELOW; OTHERWISE PROCEED TO QUESTION 10

QUESTION 9: STATUTORY DAMAGES

For any Defendant where you answered "Yes" to Question 3(B), please answer 9(A) below.

For any Defendant where you answered "No" to Question 3(B), please answer 9(B) below.

QUESTION 9(A): What amount of money not less than \$1,000 and not more than \$2,000,000 should be awarded to Plaintiff as compensation for willful trademark counterfeiting?

Diamond Orthotic Laboratory LLC: \$ _____

T&S Therapy Centre Int'l, LLC: \$ _____

Steven Olmos: \$ _____

QUESTION 9(B): What amount of money not less than \$1,000 and not more than \$1,000,000 should be awarded to Plaintiff as compensation for trademark counterfeiting?

Diamond Orthotic Laboratory LLC: \$ _____

T&S Therapy Centre Int'l, LLC: \$ _____

Steven Olmos: \$ _____

Please proceed to the next question.

QUESTION 10: TEXAS TRADEMARK INFRINGEMENT

Has Frantz Design proven, by a preponderance of the evidence, that Defendants committed trademark infringement under Texas state law?

Check "Yes" or "No."

"Yes" is a finding for Frantz Design. "No" is a finding for the Defendant shown.

Diamond Orthotic Laboratory LLC:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
T&S Therapy Centre Int'l, LLC:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Steven Olmos:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

Please proceed to the next question.

QUESTION 11(A): EXEMPLARY DAMAGES

Answer the following question for a given Defendant only if you unanimously answered “Yes” to Question 10 for that Defendant. Otherwise, do not answer the following question and proceed to the Final Page of the Jury Verdict.

For any of the Defendants below, do you find by clear and convincing evidence that the harm to Frantz Design, Inc. resulted from malice, fraud, or gross negligence?

Check “Yes” or “No.”

“Yes” is a finding for Frantz Design. “No” is a finding for the Defendant shown.

Diamond Orthotic Laboratory LLC:	YES _____	NO <input checked="" type="checkbox"/>
T&S Therapy Centre Int’l, LLC:	YES _____	NO <input checked="" type="checkbox"/>
Steven Olmos:	YES _____	NO <input checked="" type="checkbox"/>

- “Clear and convincing evidence” means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.
- “Malice” means a specific intent by a Defendant to cause substantial injury or harm to Frantz Design, Inc.
- “Fraud” means
- “Gross negligence” means an act or omission by a Defendant:
 - Which when viewed objectively from the standpoint of a Defendant at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others: and,
 - of which the Defendant has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others

Please proceed to the next question.

QUESTION 11(B): EXEMPLARY DAMAGES

Only answer 11(B) below for any Defendant for which you unanimously answered “Yes” to Question 11(A). If you did not answer “Yes” for a Defendant in 11(A), do not answer the following question for that Defendant. You must unanimously agree on the amount of any award of exemplary damages.

What sum of money, if any, if paid now in cash, should be assessed against Defendant and awarded to Frantz Design, Inc. as exemplary damages, if any, for the conduct found in response to Question 11(A).

- “Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment.
- Factors to consider in awarding exemplary damages, if any, are—
 1. The nature of the wrong.
 2. The character of the conduct involved.
 3. The degree of culpability of Defendant.
 4. The situation and sensibilities of the parties concerned.
 5. The extent to which such conduct offends a public sense of justice and propriety.
 6. The net worth of Defendant.

Answer in dollars and cents, if any.

Diamond Orthotic Laboratory LLC: \$ _____

T&S Therapy Centre Int’l, LLC: \$ _____

Steven Olmos: \$ _____

Please proceed to the Final Page of the Jury Verdict.

FINAL PAGE OF THE JURY VERDICT

You have now reached the end of the Verdict Form and should review it to ensure it accurately reflects your unanimous determinations. The jury foreperson should then sign and date the Verdict Form in the spaces below. Once this is done, notify the Court Security Officer that you have reached a verdict. The jury foreperson should keep the Verdict Form and bring it when the jury is brought back to the court room.

Signed this 3rd day of December, 2021.

Jury Foreperson

ORIGINAL SIGNATURE
REDACTED PURSUANT TO
E-GOVERNMENT ACT OF 2002